

Exhibit VV

Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Michael Orlando

08 CV 9361 (PGG)
August 10, 2011

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
YATRAM INDERGIT, on behalf of
himself and all others similarly
situated,

Plaintiff,

Case No.

- vs -

08 CV 9361 (PGG)

RITE AID CORPORATION, RITE AID OF
NEW YORK, INC., and FRANCIS OFFOR
as Aider & Abettor,

Defendants.

-----x

August 10, 2011
10:02 a.m.

Deposition of MICHAEL ORLANDO, taken by
Defendants, pursuant to Notice, at the offices
Of Epstein Becker & Green, P.C., 250 Park
Avenue, New York, New York, before Linda D.
Danelczyk, a Registered Professional Reporter,
Certified Court Reporter, and Notary Public of
the States of New York and New Jersey.

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Michael Orlando**

**08 CV 9361 (PGG)
August 10, 2011**

Page 10

1 A. Yes.

2 Q. Did you receive them on your home
3 computer?

4 Michael Orlando

5 A. Yes.

6 Q. Do you still own the home computer
7 that you received those e-mails on?

8 A. Yes.

9 Q. Okay, I will ask you to produce
10 those e-mails.

11 MR. SINHA: Well, to the extent
12 that they are subject to the
13 attorney/client privilege, we will -- we
14 reserve not to do that. But we'll take
15 it under advisement.

16 Q. You were a store manager for Rite
17 Aid, I believe; is that true?

18 A. That's correct.

19 Q. And you were paid a salary?

20 A. Yes.

21 Q. Were you paid a salary for all the
22 hours that you worked?

23 A. No.

24 Q. How many hours were you not paid
25 for?

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Michael Orlando**

**08 CV 9361 (PGG)
August 10, 2011**

Page 11

1 A. Every hour over 50 to 55.

2 Q. You were paid a salary for how
3 many hours?

4 Michael Orlando

5 A. Fifty to 55.

6 Q. And what's the basis of your
7 opinion that you were paid a salary for 50 to 55
8 hours?

9 A. Well, it's not an opinion, it's a
10 fact. I would work 60 hours and I would be paid
11 for 50.

12 Q. And what's the basis of that fact?

13 A. That I worked it. I would be
14 working over 50 hours.

15 Q. Well, how do you know that your
16 salary was only limited to 50 hours?

17 A. Because it was the same pay every
18 week.

19 Q. Same pay every week?

20 A. Yes, unless there was a raise or a
21 holiday or something of that nature.

22 Q. So you received the same amount no
23 matter how many hours you worked?

24 A. That's correct.

25 Q. So if you worked 45 hours, you

1 received the same salary?

2 A. That's incorrect.

3 Q. Oh, you were docked?

4 Michael Orlando

5 A. I was asked -- told to make up for
6 the hours that I lost.

7 Q. Who told you that?

8 A. My district manager -- well,
9 actually, I heard that from both district
10 managers that I had, was Scott B. I don't
11 recall his last name in full. And Nick P.

12 Q. If you worked 45 hours, were you
13 paid the same salary as if you worked 55 hours?

14 A. Yes.

15 Q. Did the weekly compensation you
16 were paid vary according to the number of hours
17 you worked?

18 A. No.

19 Q. You were paid a fixed salary for
20 all hours you worked; weren't you?

21 A. Yes.

22 Q. And is it your claim in this
23 lawsuit that you are due hours in excess of 55?
24 That you are due overtime for hours that you
25 worked in excess of 55?

Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Michael Orlando

08 CV 9361 (PGG)
August 10, 2011

Page 272

1 cash register?

2 A. It happened often typically in the
3 morning. The store manager would open alone to
4 Michael Orlando
5 save some labor dollars.

6 Q. What time did you open the store?

7 A. Mostly 7 a.m.

8 Q. What time did the store open to
9 the general public?

10 A. 7 a.m.

11 Q. What time did you arrive at the
12 store to open it?

13 A. It depends, usually 6.

14 Q. And what time did you schedule
15 hourly associates to join you?

16 A. It would depend on the budget that
17 week. Typically the first one would roll in at
18 8, and perhaps the next one at 9.

19 Q. So by 9 a.m. you generally had at
20 least two other people in the store working with
21 you?

22 A. It depends.

23 Q. If you opened the store?

24 A. Not always. That scenario was
25 common, not all the time.

1 There were times where I would be
2 alone and with one other cashier until noon.

3 Q. And the reason for that is?

4 Michael Orlando

5 A. There was not enough labor dollars
6 to put, you know, someone in earlier.

7 Q. Approximately how many hours a
8 week of hourly associates' time did you actually
9 supervise?

10 MR. SINHA: Object to the form.

11 A. Sir, if you would you mind
12 rephrasing that question, I don't understand it.

13 Q. Okay. I can have it repeated.

14 A. Oh, that's right, you want to try
15 that?

16 Q. Let's try that first and then
17 I'll...

18 A. Okay. Okay.

19 (Whereupon, the record was read.)

20 Q. Do you understand the question?

21 A. No, I don't understand the
22 question.

23 Q. Okay.

24 There may be no one in the store
25 but you from 7 a.m. to noon, but then there may

1 be five associates from noon to 7.

2 So that from noon to 7, you were
3 in the store at that time, you'd be supervising
4 Michael Orlando
5 35 hours.

6 Do you understand what I mean now?

7 A. I understand this, yes.

8 Q. So approximately how many hours of
9 hourly associates' time did you supervise each
10 week?

11 MR. SINHA: Objection to form.

12 A. What's your definition of
13 "supervise"?

14 Q. In the store at the same time.

15 A. In the store at the same time?
16 100 percent of the time.

17 Q. And approximately how many hours
18 is that?

19 A. Well, my hours varied. So I --
20 I -- you know, I don't know.

21 It varied so much and I didn't
22 bother calculating it because it had no meaning
23 because I wasn't being paid for it. There was
24 no reason for me to document, so I can't give
25 you an answer.

Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Michael Orlando

08 CV 9361 (PGG)
August 10, 2011

Page 283

1 A. Yes.

2 Q. And "around that time" refers to
3 about a week -- about a year ago?

4 Michael Orlando

5 A. Yes.

6 Q. Did you retain the letter that you
7 received about three weeks ago?

8 A. No.

9 Q. Did you discard that letter?

10 A. Yes.

11 Q. And why is that?

12 A. I didn't feel a need to have it.

13 Q. Are there any other documents that
14 you've received pertaining to this case?

15 A. No.

16 MR. WEINER: Off the record.

17 (Whereupon, a discussion was had
18 off the record.)

19 MR. WEINER: I'm going to stop now
20 and ask for you to proceed.

21 MR. SINHA: Okay.

22 And if you want to take a minute,
23 that will be great.

24 THE WITNESS: Yeah, that will be
25 good.

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Michael Orlando**

**08 CV 9361 (PGG)
August 10, 2011**

Page 284

1 (Whereupon, a recess was taken.)

2 EXAMINATION

3 BY MR. SINHA:

4 Michael Orlando

5 Q. Mr. Orlando, can you tell us what
6 your day-to-day duties were as a store manager?

7 A. Yes, it would be opening the
8 store. Ah, making sure the cash was in the
9 registers. Taking care of customers. Taking
10 care of merchandise. Planograms. Recalls.
11 Transfers. Price changes. Ordering
12 merchandise. Working through overstock.
13 Customer complaints. Employee appraisals.

14 That's all I can think of right
15 now.

16 Q. You also testified that you
17 stocked shelves; is that right?

18 A. Yes.

19 Q. The duties such as cleaning,
20 stocking shelves, working the register, is it
21 fair to say that those were nonmanagerial
22 duties?

23 A. Yes.

24 Q. Can you approximate what portion
25 of your day you spent doing those nonmanagerial

1 duties?

2 A. Seventy-five percent.

3 Q. And did you do these duties every
4 Michael Orlando
5 day that you worked?

6 A. No.

7 Q. How frequently did you do these
8 duties?

9 A. Approximately 75 percent of my
10 work week.

11 Q. And did you consider doing these
12 nonmanagerial duties to be part of your regular
13 duties?

14 A. No.

15 Q. You were shown a job description
16 of a store manager, which is Exhibit 7.

17 Did you see any of those
18 nonmanagerial duties listed in that job
19 description?

20 A. No.

21 Q. When you were doing these
22 nonmanagerial duties -- strike that.

23 Did your performing these
24 nonmanagerial duties affect how you were able to
25 run the store?

1 A. Yes.

2 Q. How so?

3 A. Well, for an example, if I was

4 Michael Orlando

5 doing a seven-hour planogram, I could do very

6 little else, but do the seven-hour planogram.

7 Q. Any other way?

8 A. If I was doing six or seven hours

9 of price changes, I could do very little else

10 but the price changes.

11 Q. Did your performing these

12 nonmanagerial duties affect your ability to

13 supervise staff?

14 A. Yes.

15 Q. How so?

16 A. Well, again, if I was in an aisle

17 for several hours doing whatever, I -- I

18 couldn't really see what the employees were

19 doing to properly evaluate them, or supervise

20 them.

21 Q. Before you were asked about profit

22 and loss statements, and I believe you testified

23 that you didn't have a lot of time to review

24 them; is that right?

25 A. Yes.

Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Michael Orlando

08 CV 9361 (PGG)
August 10, 2011

Page 287

1 Q. And would that also be because you
2 spent a lot of your time doing the nonmanagerial
3 duties?

4 Michael Orlando

5 A. Yes.

6 Q. Did the assistant store managers
7 also perform these nonmanagerial duties?

8 A. Yes.

9 Q. Can you approximate what portion
10 of their day they spent doing these duties?

11 A. Almost all of it.

12 Q. At Rite Aid, who made the final
13 decision regarding hiring employees?

14 A. I don't know.

15 Q. Did you make the final decision?

16 A. No.

17 Q. Who made the final decision
18 regarding terminating employees?

19 A. I don't know.

20 Q. Did you make the final decision?

21 A. No.

22 Q. You made recommendations for
23 hiring and firing?

24 A. Yes.

25 Q. And who did you make that

1 recommendation to?

2 A. The district office.

3 Q. Who made the final decision

4 Michael Orlando

5 regarding disciplining employees?

6 A. I don't know.

7 Q. Did you have the final decision in

8 disciplining employees?

9 A. No.

10 Q. Who made the final decision

11 regarding promoting employees?

12 A. I don't know.

13 Q. Did you have -- did you make the

14 final decision regarding promotions?

15 A. No.

16 Q. Who made the final decision

17 regarding evaluation of employees?

18 A. I did the evaluation.

19 Q. And did you -- strike that.

20 And did you need any sign off from

21 corporate or the DM on those evaluations?

22 A. Yes.

23 Q. Who made the final decision in

24 setting your store's payroll?

25 A. I have no idea.

1 Q. Was it you?

2 A. No.

3 Q. Who made the final decision in
4 Michael Orlando
5 setting your store's budget?

6 A. I don't know.

7 Q. Was it you?

8 A. No.

9 Q. Were you able to change the
10 budget?

11 A. No.

12 Q. Who made the -- strike that.
13 Previously you testified that you
14 could schedule overtime for employees; is that
15 right?

16 A. For some period of time, that's
17 correct.

18 Q. Did you need to get approval from
19 the district manager or corporate for that?

20 A. During some periods of time, yes.

21 Q. You also talked about Staffworks.

22 Can you briefly tell me how
23 Staffworks operated?

24 A. They would have your amount of
25 hours that you were allowed versus on the

1 computer's theory of what your sales were going
2 to be. And then you would type in the schedule
3 that fit within those guidelines.

4 Michael Orlando

5 Q. So is it fair to say that the
6 operation of Staffworks affected your ability to
7 schedule employees?

8 MR. WEINER: Objection as to form.

9 A. Yes.

10 Q. Who do you believe was ultimately
11 responsible for profitability at your store?

12 A. Ultimately responsible? Mary
13 Sammons.

14 Q. Who is Mary Sammons?

15 A. The president of the company.

16 Q. And why do you think that?

17 A. Because she's the president of the
18 company and I would have to assume that
19 budgeting starts somewhere in that area.

20 Q. And you weren't able to change the
21 budget, right?

22 A. Correct.

23 MR. WEINER: Objection as to form.

24 Q. And doesn't budgeting affect
25 profitability?

1 A. Can you please rephrase that?

2 Q. Doesn't the budget for a
3 particular store affect how profitable it will
4 Michael Orlando
5 be?

6 MR. WEINER: Objection as to form.

7 A. Yes.

8 Q. You mentioned that you trained
9 several stores, correct?

10 A. Yes.

11 Q. And that included -- correct me if
12 I'm wrong -- Rhode Island, Connecticut, New
13 Jersey, New York, New Hampshire; is that right?

14 A. Yes. Yes, I'm not positive about
15 New York, I think I was in one, but I don't
16 recall.

17 Q. Was there any differences in how
18 you trained a manager in any of those different
19 stores?

20 A. No.

21 Q. Did you apply the same system of
22 policies or procedures for training Rite Aid
23 managers at those stores?

24 A. Yes. It was a book.

25 Q. And you trained those managers

ACKNOWLEDGMENT OF DEPONENT

Michael Orlando

I, MICHAEL ORLANDO, do hereby
acknowledge that the same is a true,
correct and complete transcription of the
testimony given by me, and any corrections
appear on the attached errata sheet signed
by me.

(Date)

(Signature)

Exhibit WW

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on Behalf
of Himself and Others
Similarly Situated

Plaintiff

Civil Action No.:

vs.

1:2008cv09361

RITE AID CORPORATION, RITE
AID OF NEW YORK, INC. and
FRANCIS OFFOR as Aider &
Abettor

Defendants

_____/

The deposition of PHILIP DAVID PALUMBO was held on Tuesday, July 26, 2011, commencing at 10:00 a.m., at the Offices of Gore Brothers Reporting & Videoconferencing, 20 South Charles Street, Suite 901, Baltimore, Maryland 21201, before R. Dwayne Harrison, Notary Public.

REPORTED BY: R. Dwayne Harrison

Page 68

1 A I don't believe you could. I believe it
2 was just a generic "this number is unavailable."

3 Q So we don't really know if this person
4 knows that she's been terminated?

5 MS. SCOTT: Objection to form.

6 A I'm sorry?

7 Q Do you know whether Nemwen knows if she's
8 been terminated?

9 A We don't know. We hope the best for her.
10 Nobody has seen her or heard from her.

11 Q Well, how about a termination that did
12 involve some interaction? What's the most recent that
13 you can think of where the person knew they were being
14 terminated?

15 A That would be Nicole Sheehan.

16 Q And what happened there?

17 A She sold cigarettes to a minor in front of
18 an undercover cop.

19 Q Were you there at the time?

20 A Yes.

21 Q Tell me what happens just from top to
22 bottom.

23 A Okay. A young lady comes in. I didn't see
24 the young lady. She presents ID and, unfortunately,
25 Nicole is blind in one eye, so she didn't really -- she

1 typed in, I believe it was, '82 and it should have been
2 '92. She typed in the right month and day but not the
3 right decade which prompts on the register. She sold
4 the cigarettes to the young lady. The young lady
5 leaves. The undercover officer immediately says I need
6 the \$20 that's highlighted because they know what
7 currency she used.

8 We watch. They notified me. I came up
9 front. We went to the office and he basically said
10 you're getting a ticket for -- you have a court
11 appearance, you know, this is the information and so
12 forth, and gave her a ticket. And from there I
13 suspended her and then talked to human resources and
14 human resources made a decision that she's no longer
15 going to be employed with us. And I had to call her
16 back and inform her of that. This was February, maybe,
17 March, maybe, of this year.

18 Q Did she appeal that?

19 A No.

20 Q Did you think she should have been
21 terminated?

22 MS. SCOTT: Objection, form.

23 A Do I think she should have been terminated?
24 Yes.

25 Q Why?

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 70

1 A Do I feel bad -- why? Because she broke
2 the law.

3 Q Even though she was blind in one eye?

4 A She broke the law. I think it was an
5 honest mistake but, unfortunately, the honest mistake
6 broke the law.

7 Q And you think that warrants termination?

8 A Yeah, and after all the amounts of training
9 that we go through yearly on how to handle tobacco
10 transactions. It's reviewed over and over again.

11 Q Because of incidents like this, right?

12 A Of course.

13 Q Is that the only time you've ever had an
14 undercover cop come in?

15 A No. They do it quite frequently, actually.

16 Q If everything goes well, do you know
17 whether they come in?

18 A Yes.

19 Q How?

20 A They actually give you a certificate.

21 Q Like a trophy?

22 A Not exactly a trophy. It's just a printout
23 and then it puts the date in and the cashier's name and
24 it says, you know, congratulations. And a few years
25 ago, before that, they used to give, like, a ten-dollar

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 71

1 gift card to Domino's Pizza. I swear.

2 Q The cops gave you a ten-dollar --

3 A Not to me, to the cashier who handled the
4 transaction.

5 Q Okay. I was not aware of that affiliation
6 between the cops and Domino's Pizza.

7 A And Domino's Pizza, yeah. They don't do
8 that anymore, though.

9 Q Okay. So was that the only time in any of
10 your stores that you failed?

11 A No.

12 Q What other time?

13 A I would say probably five to seven years
14 ago -- what was her name? Mary Oliver also sold
15 cigarettes to a minor.

16 Q Was she fired?

17 A No.

18 Q Why?

19 A That was reviewed by human resources again.
20 She was a minor, so they wanted her retrained and did
21 not -- and disciplined but not fired.

22 Q Did you think she should have been fired?

23 A Yes.

24 Q Because she broke the law?

25 A Yes.

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 72

1 Q So you didn't agree with HR?

2 A I understood where they were coming from
3 because she was a minor.

4 Q Was she pretty inexperienced at the company
5 at that time?

6 A I'd say so. Although I'm sure she received
7 the proper training as far as tobacco sales.

8 Q Did you have to make sure that all the
9 associates in your stores received that training?

10 A Yes.

11 MS. SCOTT: Objection, form.

12 Q How did you do that?

13 A It's tracked through a computer system.
14 They call it CBT, it's computer-based training.

15 Q How do you make sure that the associates
16 actually go through with it?

17 MS. SCOTT: Objection, form.

18 A Go through with it as far as not sell
19 cigarettes to minors or do the training?

20 Q Do the training.

21 A That will show up in an exception report
22 that you can print off of the Rite Aid portal which is
23 kind of the Windows-based information screens.

24 MS. SCOTT: Counsel, we've been going for
25 almost an hour half. Do you mind if we take a break?

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 99

1 Q In terms of experience level, are they
2 comparable?

3 MS. SCOTT: Object to form.

4 A Aradnha has a little more experience, I
5 think, overall. Larry just returned to the company
6 about six months ago, but he has a lot of previous
7 experience with Rite Aid.

8 Q Are either of them interested in getting
9 promoted?

10 A Yes.

11 Q Both of them?

12 A No.

13 Q Which one?

14 A Larry.

15 Q Why isn't Aradnha interested?

16 A She's actually been offered that
17 possibility to take the next step and she feels she's
18 not ready for it.

19 Q Do you agree with her?

20 A I disagree in the fact that I think if she
21 had her own store she would be quite capable.

22 Q Have you encouraged her to try to take
23 that?

24 A Yes.

25 Q And what does she say to you?

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 100

1 A No.

2 Q She just doesn't feel like she's ready?

3 A She doesn't feel she's ready, no.

4 Q What shifts do they typically work?

5 MS. SCOTT: Objection to form.

6 A They usually work either, like, say -- I
7 guess they're on nine-hour days which kind of
8 fluctuates. They usually work between 8:00 to 5:00
9 sometimes and then they also close which would be,
10 like, a 3:00 to midnight. Sometimes it's, you know,
11 10:00 to 8:00 or something along those lines. It's not
12 an exact science with the way that the scheduling tool
13 is put together.

14 Q Do you write the schedule?

15 MS. SCOTT: Objection to form.

16 A I use a scheduling tool to create the
17 schedule.

18 Q Staffworks?

19 A No. That's the old one.

20 Q Okay. What's the new one called?

21 A The new one is called Workforce Management.

22 Q When did that change happen?

23 A Quite some time ago. Let me think. Let me
24 think. Again, I'm taking an educated guess. I'm going
25 to say two years ago.

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 101

1 Q Do you think that was an improvement on
2 Staffworks?

3 MS. SCOTT: Objection to form.

4 A It definitely was the same type program in
5 a Windows format which I do think it's an improvement.

6 Q Just visually or did it also help
7 efficiency-wise?

8 A I'd say it would be pretty comparable.
9 Visually, it was a much better program and as far as
10 the hands-on use, it's a little more user friendly, I
11 guess you could say.

12 Q Anybody else other than you do the schedule
13 in your store right now?

14 A Not usually. Larry and Aradnha both have
15 been trained on how to.

16 Q But have they ever done it for you?

17 A Larry has in his training because I trained
18 him. Aradnha, I believe, has in the past as well.

19 Q Under what circumstances would they do the
20 schedule?

21 A If I were to take a vacation week and not
22 prepare two weeks of schedule, they could do it.

23 Q Do you ever do that?

24 A No. I usually make it myself. I usually
25 do it two weeks in advance.

1 comfortable interviewing anybody and, again, it would
2 be -- if they did interview them, I would probably more
3 than likely want to interview them again before they
4 were hired which, to be honest with you, is like double
5 work.

6 On the other hand, if an assistant manager
7 came to me and said I want to learn how to do this, let
8 me do this, I would be more than welcome to coach them
9 and mentor them and let them actually physically go
10 through the applications. It's not a very fun job. It
11 really isn't. I'll be honest.

12 Q And so you don't often have assistant
13 managers ask to do it because it's not very fun?

14 A No.

15 Q Is there a similar process with regard to
16 promoting people like an interview or a screening?

17 MS. SCOTT: Objection, form.

18 A Could you repeat? Is that like an internal
19 promotion?

20 Q Yes.

21 A There is a -- yes, there is. There is
22 another background check and urinalysis.

23 Q And what?

24 A A drug test, urinalysis.

25 Q I wasn't sure if you said your analysis.

1 A No. I'm sorry. I'll just call it a drug
2 test. Sorry.

3 Q Okay. So another background check and drug
4 test but not necessarily an interview?

5 A Yes. There's a structured interview for
6 associates that would like to become a shift
7 supervisor.

8 Q And you conduct that interview as well?

9 MS. SCOTT: Objection, form.

10 A Yes. Excuse me. I'd like to clarify that.

11 Q Sure.

12 A There's a structured interview that I do
13 and there's a structured interview that the district
14 manager does.

15 Q For shift supervisors?

16 A Yes.

17 Q So you do the first interview and the DM
18 does the second?

19 A Yes.

20 Q Do you know if it works that way in all
21 districts?

22 MS. SCOTT: Objection, form.

23 A To my knowledge, that's the way the company
24 policy should be.

25 Q But you're not sure?

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 184

1 A I couldn't answer for any other district.

2 Q Does the district manager interview the
3 candidate regardless of whether you like the candidate
4 or not or does it depend on the result of your
5 interview?

6 MS. SCOTT: Objection, form.

7 A I think mine would be the preliminary
8 interview. So if they're not material to be promoted,
9 at least at that point in time or not a consideration,
10 that the district manager probably would not interview
11 them in most cases.

12 Q You mentioned earlier that the district
13 manager needed to interview some assistant manager
14 candidates and, if you like the assistant manager
15 candidate, they generally trust you.

16 Is that also true of the shift supervisor
17 candidates?

18 MS. SCOTT: Objection, form.

19 A My district manager would trust my
20 judgment?

21 Q Yes.

22 A Yes, I think he'd trust my judgment.

23 Q Has he ever gone the other way on somebody?

24 MS. SCOTT: Objection, form.

25 A Not that I can recall.

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 303

1 MS. PUCKETT: Okay.

2 BY MS. PUCKETT:

3 Q Mr. Palumbo, are there any other facts that
4 we have not discussed today that relate to the lawsuit?

5 MS. SCOTT: Objection. Asked and answered.

6 Q You can answer.

7 A I really don't -- I'm sure there's -- you
8 can ask me -- I mean, you're really, honestly, asking
9 me what I feel are bizarre off-the-wall questions about
10 my daily activities and things that I've experienced
11 and I really don't see how this has anything to do with
12 any type of lawsuit, but apparently it does.

13 Q Okay. Was your pay ever docked at
14 Rite-Aid?

15 MS. SCOTT: Objection, form.

16 A I cannot remember any situations where I
17 had my pay docked.

18 Q Has your testimony been complete and
19 accurate today?

20 A Yes.

21 MS. PUCKETT: have no further questions.

22 MS. SCOTT: If I could just have five
23 minutes...

24 (There was a brief recess taken at 5:04 and
25 the deposition resumed at 5:13 p.m.)

Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo

1:2008cv09361
July 26, 2011

Page 304

1 EXAMINATION BY MS. SCOTT:

2 Q All right. Mr. Palumbo, I'm going to ask a
3 series of questions now just to follow up on what
4 opposing counsel has asked you.

5 What duties that you complete as a store
6 manager would you consider to be non-managerial?

7 A Non-managerial? Processing film; printing
8 film; ringing register; stocking shelves; moving
9 freight; cleaning toilets; cleaning parking lots;
10 mopping floors; probably taking out trash; putting
11 returns back on the shelf; organizing stock rooms;
12 organizing ad goods; building end caps; filling aisles
13 in with overstock. That's a lot of manager --
14 non-managerial duties that are done.

15 Q And what percentage of your time would you
16 consider -- strike that.

17 What percentage of your time as a store
18 manager is spent doing non-managerial tasks?

19 A A percentage? If I were to guess, on an
20 average week, I would say about 80 percent, possibly
21 85.

22 Q Do assistant store managers also complete
23 these non-managerial tasks?

24 A Yes.

25 Q What is the difference in job duties and

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 305

1 tasks between an assistant store manager and a store
2 manager at Rite-Aid?

3 MS. SCOTT: Objection to form.

4 A They're the same. They're the same duties.
5 The biggest difference would be, I guess, the overall
6 accountabilities of the store manager.

7 Q But you would say that an assistant store
8 manager and store manager basically complete the same
9 tasks?

10 A Yes. When I'm on vacation, I expect my
11 assistant managers to complete the tasks. The business
12 goes on. I mean, it has to get done.

13 Q Are assistant store managers paid hourly or
14 are they salaried?

15 A They are hourly now.

16 Q Were they ever salaried?

17 A Yes.

18 Q When did that change?

19 A I don't know the exact date. If I were to
20 guess, I would say about 18 months ago, possibly two
21 years ago.

22 Q And are they still -- are assistant store
23 managers still completing the same tasks and duties as
24 store managers at Rite-Aid?

25 A Yes, but they don't have a 50-hour work

1 week. They're based on a 45-hour work week that
2 involves 40 hours of regular time and five hours of
3 overtime.

4 Q So assistant store managers are paid five
5 hours of overtime every single week; is that correct?

6 A I wouldn't say that's correct. Their work
7 is based on that. For example, if they work less than
8 that, they won't make the same amount. If they work
9 more that, they'll more than that.

10 Q So if assistant store managers work over 45
11 hours they get paid overtime for that time?

12 A Yes. Anything over the 40 hours they work
13 they will get overtime for.

14 MS. SCOTT: That's all I have.

15 EXAMINATION BY MS. PUCKETT:

16 Q Just to followup, while -- during the
17 80 percent of your time that you say that you're
18 performing non-managerial duties you described, you are
19 still in charge of the store, right?

20 MS. SCOTT: Objection, form.

21 A As far as ultimate responsibility?

22 Q Yes.

23 A Ultimately, yes, I would say I'm the person
24 in charge of the store.

25 Q And that's no less true because you're

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 307

1 stocking a shelf, right?

2 MS. SCOTT: Objection, form.

3 A I say that's -- I would say that, yes, I'm
4 still the one that's in charge.

5 Q Do you understand the term "lead by
6 example?"

7 A Yes, I do.

8 Q Do you believe in it?

9 A Whole-heartedly.

10 Q Tell me about lead by example.

11 A Lead by example is what I feel I portray to
12 the most of my employees. I would never ask anybody to
13 do something that I'm not willing to do.

14 Q And why do you think that is an effective
15 managerial technique?

16 MS. SCOTT: Objection, form.

17 A It sets a good example.

18 Q Would you say that your employees are more
19 motivated to clean a bathroom if they know that you
20 would clean a bathroom?

21 MS. SCOTT: Objection, form.

22 A I wouldn't say necessarily motivated. I
23 would say probably willing to if they know that I
24 cleaned it last time, maybe somebody else can do it
25 this time.

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Philip David Palumbo**

**1:2008cv09361
July 26, 2011**

Page 311

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

PHILIP DAVID PALUMBO

Exhibit XX

**Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Christopher B. Paul**

**1:2008cv09361
July 21, 2011**

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on Behalf
of Himself and Others
Similarly Situated

Plaintiff

Civil Action No.:

vs.

1:2008cv09361

RITE AID CORPORATION, RITE
AID OF NEW YORK, INC. and
FRANCIS OFFOR as Aider &
Abettor

Defendants

_____/

The deposition of CHRISTOPHER B. PAUL was held on Thursday, July 21, 2011, commencing at 9:30 a.m., at the Offices of Gore Brothers Reporting & Videoconferencing, 20 South Charles Street, Suite 901, Baltimore, Maryland 21201, before Susan M. Wootton, Notary Public.

REPORTED BY: Susan Wootton, RPR, CLR

1 store, moved to quite a bit higher volume, I proposed a
2 raise to him.

3 Then he kind of went away. Then I went
4 through the remodel. Eventually the regional vice
5 president gave me a raise, so --

6 Q Was that while Garrett was your district
7 manager?

8 A It was while, I guess Larry technically was
9 my district manager at the time.

10 Q Okay. So backing up for a minute, you had
11 also asked Rick for a raise?

12 A Yes.

13 Q And what did he say?

14 A He said, it will take three to six months
15 of a trial basis at the store to see if you can make
16 it.

17 Q At 934?

18 A Correct.

19 Q Okay. And then, what was the raise that
20 you were given by an RVP at 934?

21 A How much?

22 Q Yes.

23 A \$10,000.

24 Q Was that before or after the remodel?

25 A After.

1 Q Okay. So then, any conversations that you
2 had with Garrett about the hours you worked or your
3 compensation?

4 MS. SCOTT: Objection to form.

5 THE WITNESS: He wasn't very responsive to
6 it, almost shrugged it off.

7 Q What did he say?

8 A You know, one time I remember specifically
9 he said, you know how many hours I work in a week?

10 Q Do you remember anything else he said?

11 A No. I mean eventually I quit saying stuff
12 to him about it. It was always almost a shrug off.

13 Q How did the hours you worked at 944 compare
14 to the hours you worked at 934 as a store manager?

15 A Probably 55 to 60 at 944, and probably 60
16 to 65, maybe more, 65 to 70 at 934.

17 Q When you became an assistant store manager,
18 you were paid on a salary basis, is that correct?

19 A After I completed my 12-week training, I
20 went to salary yes, I did.

21 Q Once you became a salaried assistant store
22 manager, did you have an understanding that you would
23 receive the same pay regardless of the number of hours
24 you worked?

25 A Yes, that my salary would be the same each

1 week, yes.

2 Q And it was the same each week, wasn't it?

3 A It was.

4 Q Do you remember how much it was when you
5 were an assistant store manager?

6 A I started at twenty-seven five, which
7 ironically was \$10.20 an hour, where I was making
8 \$11.75 when I was hourly.

9 Q And did it change while you were an
10 assistant store manager?

11 A Did my pay rate change?

12 Q Your salary.

13 A I think it might have been one yearly raise
14 in there, which was \$1,000 maybe.

15 Q And then, when you became a store manager,
16 did your salary change?

17 A Yes.

18 Q To what?

19 A 39, 9.

20 Q Then you said you got the first increase
21 from an RVP at 934?

22 A I got one raise while I was at 944 to get
23 to like 41, 40, 41.

24 Q Okay. And then you got a raise at 934 to
25 51?

1 store manager?

2 A For a good amount of time, yes, yes, ma'am.

3 Q Okay. So look back at page 1, and I want
4 you to read through the essential duties and
5 responsibilities.

6 And it starts with, the associate is
7 responsible for the functions below, and so I want you
8 to let us know, after you read through 1 through 9, if
9 there are any functions listed there that you were not
10 responsible for as a store manager at Rite Aid?

11 A Okay. Nothing with one.

12 Q When you say nothing with one, you were
13 responsible for number 1?

14 A Correct. That's accurate.

15 Q Okay.

16 A Two, we were responsible for that. Three,
17 we were responsible for that. It changed to Workforce
18 Management.

19 The program changed from Staffworks to
20 Workforce Management, a different program called
21 Workforce Management.

22 Number 4, that's correct. Number 5 is
23 correct. Number 6 is correct.

24 Number 7 is correct with additional
25 district manager direction, I would say. Number 8 is

1 correct.

2 Number 9 is correct, except for the hiring
3 portion. We were able to hire cashiers but not as
4 supervisor or management.

5 Q You did not hire any shift supervisors as a
6 store manager at Rite Aid?

7 A I did not hire.

8 Q And you did not hire any assistant store
9 managers while you were a store manager at Rite Aid?

10 A I did not hire. I did do paperwork, but it
11 went through the DM. The DM did final say on all
12 management.

13 Q Did you ever interview a shift supervisor
14 candidate?

15 A Yes.

16 Q And which store did that happen in?

17 A 934.

18 Q Was that a candidate that you favored?

19 A I didn't favor -- at the end of the
20 interview, there were several.

21 I was actually, we would have people come
22 in at certain times, and I would be one of the
23 interviewers. The pre-interviewers were the DM.

24 Q Would you give your recommendation as to
25 whether or not the person should be hired?

1 A Yes.

2 Q Do you recall whether any of those people
3 were hired that you recommended be hired?

4 A Some were.

5 Q Were there some that you recommended be
6 hired who were not hired?

7 A Yes.

8 Q Were there any that you recommended not be
9 hired who were hired?

10 MS. SCOTT: Objection to form.

11 THE WITNESS: Nope.

12 Q If we go back to number 7 for a second, on
13 Exhibit 1, you said, with additional DM direction.

14 By that, do you mean your DM's also had
15 certain merchandise standards?

16 A The DM would come to your store and have
17 you frequently change or adjust or different things.

18 Q Adjust what had been communicated by the
19 corporate planograms?

20 A Yes, for instance, in the seasonal
21 department, how to flex and add something to what
22 corporate wanted.

23 Q Were there times, as a store manager, that
24 you talked with your DM about making adjustments to
25 corporate planograms that you thought would be helpful?

1 Q And this is a performance appraisal dated
2 March 23rd, 2007, that you received from Rick Chapman?

3 A Yes.

4 Q And then the last page includes your
5 self-appraisal, is that right?

6 A Yes.

7 Q I just want you to look at the first page.
8 Again, at which store were you at in March of 2007?

9 A This should be South Hills.

10 Q 944?

11 A Yes. Yes. I had been there about three or
12 four months.

13 Q And it shows that that store also came in
14 for payroll under the budgeted payroll for the year,
15 correct?

16 A Correct.

17 MS. BARBAREE: Thank you for your time,
18 Mr. Paul.

19 THE WITNESS: Thank you.

20 EXAMINATION BY MS. SCOTT:

21 Q Mr. Paul, I'm going to be asking you some
22 questions now.

23 A Okay.

24 Q Which of your duties that you performed, as
25 a store manager at Rite Aid, would you consider

1 nonmanagerial?

2 MS. BARBAREE: Objection to form.

3 THE WITNESS: Nonmanagerial would be
4 unloading trucks, unloading liquor trucks, putting up
5 stock, recalls, price changes.

6 MS. SCOTT: Would you consider cleaning a
7 nonmanagerial task?

8 MS. BARBAREE: Objection to form.

9 THE WITNESS: Nonmanagerial, absolutely.

10 MS. SCOTT: Would you consider working the
11 register, cash register a nonmanagerial task?

12 MS. BARBAREE: Objection to form.

13 THE WITNESS: Nonmanagerial, yes, I agree.

14 MS. SCOTT: Are there any other duties that
15 you would consider nonmanagerial?

16 MS. BARBAREE: Objection to form.

17 THE WITNESS: Running the registers,
18 cleaning, putting up stock, doing planograms, setting
19 seasonal, putting up stock, I think that I already said
20 that, liquor truck, unloading trucks. That's probably
21 it.

22 MS. SCOTT: On an average week, how many
23 hours would you work in the store as a store manager?

24 MS. BARBAREE: Objection to form.

25 THE WITNESS: Average about 65.

1 MS. SCOTT: What percentage of those 65
2 hours would you spend doing nonmanagerial tasks?

3 MS. BARBAREE: Objection to form.

4 THE WITNESS: 50 to 60.

5 MS. SCOTT: How frequently would you do
6 nonmanagerial tasks?

7 MS. BARBAREE: Objection to form.

8 MS. SCOTT: Would you do them every day?

9 MS. BARBAREE: Objection to form.

10 THE WITNESS: Daily.

11 MS. SCOTT: To your knowledge, are these
12 tasks a part of your job description?

13 MS. BARBAREE: Objection to form.

14 THE WITNESS: Yes. They were not written
15 in the job description but expected.

16 MS. SCOTT: Okay. If you look at Exhibit 1
17 or what's been previously marked as Exhibit 1, the
18 store manager job description --

19 THE WITNESS: Bear with me.

20 MS. SCOTT: -- do you see any of those
21 nonmanagerial tasks that you just described written on
22 there anywhere?

23 MS. BARBAREE: Objection to form.

24 THE WITNESS: Nope.

25 MS. SCOTT: Why would you say that they're

1 considered part of your job description?

2 MS. BARBAREE: Objection to form.

3 THE WITNESS: Because of the way that it
4 was created there was nobody else to do it.

5 MS. SCOTT: How did doing these
6 nonmanagerial duties affect the way that you were able
7 to manage your store?

8 MS. BARBAREE: Objection to form.

9 THE WITNESS: It left you less time to
10 examine things such as your P&L to get your operating
11 expenses under, to manage your sales, to do additional
12 things, incremental items, creativity.

13 I think you lose a lot of that by doing
14 those.

15 MS. SCOTT: Would it be fair to say that
16 doing these, or being required to do these
17 nonmanagerial tasks took away from the time that you
18 had to do your managerial tasks?

19 MS. BARBAREE: Objection to form.

20 THE WITNESS: Yes.

21 MS. SCOTT: Did Rite Aid expect that you
22 still supervise your store while you were engaged in
23 nonmanagerial tasks?

24 MS. BARBAREE: Objection to form.

25 THE WITNESS: Yes.

1 MS. SCOTT: Were you able to fully
2 supervise your staff when you were having to do these
3 nonmanagerial tasks?

4 MS. BARBAREE: Objection to form. To the
5 best of my ability, yes, but not, I wouldn't say fully,
6 no.

7 MS. SCOTT: For instance, if you were in
8 the back unloading a truck, would you be able to
9 supervise your cashiers at the register?

10 MS. BARBAREE: Objection to form.

11 THE WITNESS: No.

12 MS. SCOTT: Did the assistant store
13 managers also perform nonmanagerial tasks?

14 MS. BARBAREE: Objection to form.

15 THE WITNESS: Yes, they did.

16 Q When Tracey was asking you some questions
17 earlier, you talked about negative hours when punching
18 in and out of the time clock.

19 Can you explain what you meant by negative
20 hours?

21 A The way the salary structure is built you
22 only punch once, so essentially at the end of the week
23 it will say 50 hours as your salary base.

24 If you were to punch in and out every day
25 and work to an extent that is above that 50 hours,

1 because it does track your time, it shows up as a
2 negative number.

3 For instance, if I were to work 65 hours
4 even, it would come up as negative 15.

5 Q You mentioned earlier that, instead of,
6 occasionally instead of putting in a maintenance
7 request, you would just do the maintenance yourself?

8 A Yes.

9 Q Why would that be? Why would you do the
10 maintenance?

11 A One, it would save money, two, it would
12 save time, and that's usually the reason why, or it was
13 something silly that you would pay to call out a
14 hundred bucks for, that you could do by going to the
15 hardware store for five.

16 Q It would help profitability of your store?

17 A Absolutely.

18 Q Would you consider these maintenance tasks
19 nonmanagerial tasks?

20 MS. BARBAREE: Objection to form.

21 THE WITNESS: Yes.

22 Q You mentioned that keeping the store clean
23 was one of the top three priorities for you at all
24 times.

25 What tasks would you do or what tasks would

1 long as they passed through the drug test, the
2 background check, I had the final say, and we had to
3 check also our payroll system to make sure they were
4 either hireable or rehirable.

5 If they got through those, then I did, I
6 was able to hire cashiers. Any managerial function job
7 or promotion went through the district manager and
8 human resources manager.

9 MS. SCOTT: For the cashier positions, did
10 HR run the background check?

11 MS. BARBAREE: Objection to form.

12 THE WITNESS: We would fill out a
13 background check form and fax it in, I think to a third
14 party company.

15 MS. SCOTT: If that background check came
16 back as having some sort of criminal background, would
17 it automatically not allow you to hire the potential
18 employee?

19 MS. BARBAREE: Objection to form.

20 THE WITNESS: Correct. Also there was a
21 system quick screen that you had to run them through.
22 If they failed that, they did not qualify.

23 MS. SCOTT: And what other responsibilities
24 on that list did you not have the final say in?

25 MS. BARBAREE: Objection to form.

1 THE WITNESS: Rewarding, I'm not really
2 sure where that even falls into place.

3 You can reward them with praise. There
4 wasn't a whole lot of rewarding going on, reward them
5 with promotions. That was the final say by the DM or
6 human resources, or both.

7 Disciplining associates, you did have some
8 freedom to do that. As for terminations, they had to
9 go through the human resources department.

10 I think that's about it.

11 MS. SCOTT: Okay. If you'll look at
12 Exhibit Number 2, the associate store manager's
13 responsibilities --

14 THE WITNESS: All right.

15 MS. SCOTT: -- under the essential duties
16 and responsibilities, the nonmanagerial tasks that we
17 spoke of earlier are not included on that list, is that
18 right?

19 MS. BARBAREE: Objection to form.

20 THE WITNESS: That's right.

21 MS. SCOTT: But they would have to complete
22 those nonmanagerial duties?

23 MS. BARBAREE: Objection to form.

24 THE WITNESS: Yes, every day.

25 MS. SCOTT: You mentioned earlier that you

1 would often have an office day and that day would
2 usually fall on Mondays.

3 Would you still do nonmanagerial work on
4 that office day?

5 MS. BARBAREE: Objection to form.

6 THE WITNESS: Yes, typically you're ending
7 up having to work in the photo department and do
8 people's photos and run the register, handle, I guess,
9 vendors that might be, because they're managerial
10 tasks, I would say, customer complaints, all that kind
11 of stuff.

12 But you try to focus on the office day, and
13 there is, you know, you try to schedule a backup
14 management person, but it doesn't always work out.

15 So you end up a lot of, honestly with a lot
16 of register time and photo time.

17 MS. SCOTT: So, is it safe to say that you
18 would still have to make sure that all the work was
19 completed no matter --

20 MS. BARBAREE: Objection to form.

21 THE WITNESS: Yes. Sorry.

22 MS. SCOTT: You still had to make sure that
23 all the work was completed?

24 MS. BARBAREE: Objection to form.

25 THE WITNESS: Correct.

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Christopher B. Paul

Exhibit YY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
 YATRAM INDERGIT, on behalf of :
 himself and others similarly :
 situated, :
 :
 Plaintiff, :
 :
 vs. : CIVIL ACTION
 : NO. 1:08-cv-
 : 09361-PGG-HBP
 RITE AID CORPORATION, RITE AID OF :
 NEW YORK, INC., and FRANCIS OFFOR :
 as Aider & Abettor, :
 :
 Defendants. :
 - - - - - X

July 13, 2011

Deposition of ARTHUR PEREZ, taken pursuant to notice, held at the offices of Epstein Becker & Green, P.C., 250 Park Avenue, New York, New York, commencing at 9:57 a.m. before Jamie I. Moskowitz, a Registered Professional Reporter and Notary Public.

1 A Maybe two years, three years.

2 Q And before Clarence Hill, who was your
3 district manager?

4 A Gus Fogliano.

5 Q And about how long was he your
6 district manager?

7 A Couple of years, maybe two years or
8 maybe three. I'm really trying to go backwards.

9 Q Yeah, now we're getting back there, I
10 agree.

11 Do you remember who was the district
12 manager before Gus?

13 MR. SINHA: If you know.

14 THE WITNESS: I'm trying to go back.

15 BY MR. WEINER:

16 Q Do you remember who the district
17 manager was when you worked in Stamford?

18 A In Stamford, the district manager was
19 Roger Perez.

20 Q So, Clarence Hill and Gus Fogliano
21 were the district manager when you worked in Norwalk
22 on East Avenue?

23 A Yes.

24 Q Do you remember who the district
25 manager was when you worked at the Westport Avenue

1 store?

2 A When I was on Westport Avenue, it was
3 Gus Fogliano and Clarence Hill. I remember them.

4 Q You were the store manager throughout
5 this entire time period; isn't that right?

6 MR. SINHA: Objection to form.

7 BY MR. WEINER:

8 Q You just have to say yes. I saw you
9 nod, but...

10 A Yeah, to an extent, yes.

11 Q Well, what do you mean by "to an
12 extent, yes"?

13 A Because in my previous work, being the
14 manager is to run the store. In this particular
15 store, it was really the DM who really run the
16 store. He come in, tell us what to do, and that's
17 what we did.

18 Q The position that you held was store
19 manager; is that correct?

20 A That's what they told me, yes.

21 Q Were you working for Rite Aid as an
22 assistant store manager?

23 A When I start working with the company,
24 they hired me as a manager. Then one of the DMs got
25 demoted and they told me that I was going to be

1 co-manager or manager of the store. I was the same
2 label. They never told me that I was an assistant
3 or anything. If they did on paper, I don't know.
4 But they never told me I was an assistant. I was
5 never told that I was an assistant.

6 Q So you were told that you were a store
7 manager; is that correct?

8 A That's correct.

9 Q Were you ever told you were a
10 co-manager?

11 A Yeah. They say it was going to be one
12 or the other, either manager or co-manager. But we
13 was both in the same label, position. That's what I
14 was told.

15 Q And who was it that told you that?

16 A I was told by RVP, Joseph Garvey.

17 Q RVP is regional vice president?

18 A Yes.

19 Q Garvey?

20 A Yes.

21 Q G-a-r-v-e-y?

22 A Yes.

23 Q And about when did this conversation
24 take place?

25 A It was the same -- I think I was with

1 MR. SINHA: Objection to form.

2 BY MR. WEINER:

3 Q Is that correct?

4 A What was that?

5 Q Is that correct?

6 A Can you say that again, please?

7 Q Yes. Did he tell you that you had to
8 work within the budget he gave you and that you
9 could not get anymore?

10 MR. SINHA: Objection to form.

11 THE WITNESS: No, he didn't say he
12 gave me.

13 BY MR. WEINER:

14 Q What did he say?

15 A He say, "That's the budget that
16 corporate gave you. Corporate base it on whatever
17 they base, and that's what you guys got to use."

18 Q So, Mike Barrett said that it wasn't
19 his decision to give you fewer hours in the labor
20 and budget; he said that it was a decision that came
21 from higher up?

22 MR. SINHA: Objection to form.

23 BY MR. WEINER:

24 Q Is that correct?

25 A That's correct.

1 Q And that he couldn't get you anymore
2 hours; is that correct?

3 MR. SINHA: Objection to form.

4 THE WITNESS: I don't know if he use
5 that kind of term you're saying. He said -- I
6 remember him saying, "That's the budget that
7 corporate give you. That's what you guys have
8 to work with."

9 BY MR. WEINER:

10 Q And how did you work with that budget?

11 A It was very hard to work with the
12 hours that we have. And I will have to work, me and
13 my assistant, to -- you know, 70 hours a week to
14 cover what we didn't have covered.

15 Q Well, let's discuss that. What was
16 your schedule of work? Did you open the store or
17 did you close the store?

18 A We did both.

19 Q What did you do?

20 A I open couple of days, and I close at
21 least two to three nights.

22 Q Can you recall which days you opened,
23 or did that vary?

24 A That varied.

25 Q What were the factors that went into

1 the variation of the days of the week that you
2 opened the store?

3 A If I have my -- between my assistant
4 and my shift, so if they only open -- if they open
5 four days, so the other three days I will open. If
6 they only close two days, so then the other days,
7 whatever. We just rotate, work it out. So, I will
8 close.

9 Q How did you decide which days would
10 you open and which days they would open?

11 A Well, we -- based on the need of the
12 store.

13 Q Did the need of the store determine
14 whether you opened the store or your assistant
15 manager opened the store?

16 A Yes. Like if it was truck day, if
17 it's truck day and the truck is coming at 4 in the
18 afternoon, so I schedule myself to close, because I
19 have to unload the truck.

20 Q Because you have to?

21 A Unload it. Unload the truck.

22 Q Right, unload the truck.

23 A If the truck is coming in the morning,
24 so then I would change it, because the truck change
25 every holiday, move a day. And that goes out, we

1 schedule myself or my assistant to come in around
2 7:00 p.m., take care of everything from the floor,
3 so this guy would come in at night, when we close
4 the store, and start doing it. They finish at 1, 2
5 in the morning, and then we would have to put
6 everything back, so we could open the store the
7 following morning.

8 Q And did that take you and your
9 assistant manager or either one of you?

10 A Either one.

11 Q The fellow who did the floor, did his
12 pay come from your labor budget?

13 A No, not from the labor. It came from
14 the store, but not from the budget, no.

15 MR. WEINER: I'm going to ask to take
16 two more minutes.

17 (Whereupon, a short break was taken.)

18 BY MR. WEINER:

19 Q The fellow that buffed the floor, you
20 said he was not paid from your labor budget but that
21 the store paid him; is that correct?

22 A Yeah. They take it out of the -- the
23 money comes somehow. That's what I was told. We,
24 the store, pay those guys whatever the guys charge.
25 But the guy that stayed there, like when we go there

1 and stay at the store, that's out of our budget.

2 Like if I work 10 hours, 12 hours, that comes out of
3 my budget. My assistant, that comes out of my
4 budget.

5 Q The number of hours you worked were
6 also part of the labor budget?

7 A Yes.

8 Q On truck day, was that something that
9 only you could unload the truck or was that
10 something that the assistant store manager could do
11 as well?

12 A Yes. Any -- anybody could do it. A
13 cashier could do it or somebody that works on the
14 floor or something. But, normally, because of the
15 budget, we schedule ourself, me and the assistant,
16 12 hours that day. We have to be there 12 hours a
17 day. And then we have two cashiers running the
18 front, so him and I will do it.

19 Q Both of you would be there 12 hours a
20 day?

21 A Yes, sir.

22 Q And two cashiers would be working the
23 cash registers?

24 A Yes.

25 Q And the shift supervisor?

1 A Sometimes two cashier and the -- yeah.

2 Q Two cashiers and the shift supervisor?

3 A Depends on the schedule. There was
4 times that we keep either one cashier, if it's not
5 busy, and then we have another one helping us pull
6 the truck. When I'm working, pulling the truck with
7 my assistant, when we get busy, she call that one of
8 us goes and ring up the register. Whoever is closer
9 to the register go and jump on that and start doing
10 that. Same thing we follow.

11 Q When you were in the store, were you
12 the highest ranking official in the store?

13 MR. SINHA: Objection to form.

14 BY MR. WEINER:

15 Q You're the store manager. When you
16 were in the store and the assistant store manager
17 was also in the store and the shift supervisor was
18 also in the store and cashiers were also in the
19 store, someone may have been in the photo lab, there
20 were other people in the pharmacy, you were the top
21 person in authority in the store, weren't you?

22 MR. SINHA: Objection to form.

23 THE WITNESS: Not really, because the
24 decision that I make, the assistant could make
25 it or the shift, because we -- not much

1 for our customers." What did you mean by that?

2 A Well, I want to do more things for the
3 customer, but there was no time to do it. I really
4 want to do more for them. If a customer need a
5 favor or something, I want to be able to go and help
6 them.

7 Q What kind of favor?

8 A Like if a customer, an old lady, will
9 come and tell me, "Listen, I am looking for
10 Tylenol," we don't have a choice. The only choice
11 that we have is give the customer the finger,
12 "Aisle 7."

13 Q Is that giving the customer the
14 finger, just pointing to the aisle?

15 A Yeah, all the time the finger.
16 Because, to me, that's not customer service. An old
17 lady, you should walk the lady to the aisle or go
18 get it for her. But we couldn't do it because I
19 have three people waiting in line here and I'm
20 ringing on the register.

21 So, I have to go like -- hey, I
22 address this in several meetings. I mean, you have
23 to give the customer, "Aisle 7, go down, all the way
24 down." If you find it, good. If you don't -- I
25 mean, that's not a way to run a business.

1 MR. SINHA: For the record, when the
2 witness was gesturing, he was gesturing with
3 his index finger.

4 THE WITNESS: Yeah, that's what I
5 mean.

6 BY MR. WEINER:

7 Q Pointing?

8 A Pointing.

9 Q Pointing to the aisle?

10 A Yeah. Just, to me --

11 Q With the index finger?

12 A It's just like -- that's like --
13 giving them the finger, I don't think that's the way
14 anybody should run a business.

15 Q And another strength that you wrote
16 was, "My ability to make decisions to benefit my
17 store." What did you mean by that?

18 A Well, there's no ability to make
19 decisions, because you don't make the decision. The
20 DM makes the decision for you, the loss prevention,
21 the HR. And I thought that I supposed to be the one
22 making the decisions, you know, in the store.

23 Q Well, let me ask you this. Number 6
24 says, "What do you feel are your greatest strengths
25 in your current position?"

1 And you wrote, "My ability to make
2 decisions to benefit my store." Now, was that true
3 when you wrote that?

4 A Yeah. I mean, I want to have more
5 ability to make decisions. That's what I meant by
6 writing that.

7 Q You said that one of your greatest
8 strengths was your ability to make decisions to
9 benefit my store, correct?

10 A Maybe I misunderstood the question.
11 Let me see.

12 Q Number 6.

13 A Number 6. I put it there. I have
14 ability to make the decision to benefit my store.

15 Q That was one of your strengths as a
16 store manager, wasn't it?

17 A Yes, sir. I mean, I put it there.

18 Q Number 7, "What areas do you need to
19 develop? What assistance do you need?"

20 And you wrote, "Controlling and
21 organizing my office paperwork." Is that correct?

22 A That's correct.

23 Q And what does that mean?

24 A Well, there's very limited time, as a
25 manager, to spend in the office. I used to go in

1 the office. So, every time I get paperwork from
2 vendors and everything, so you don't have time,
3 like, to put them on file and everything. So, you
4 just put them in a pile. And I think that I was
5 supposed to make more time just to organize that
6 paperwork. And that's what I mean by that.

7 Q Number 8, "How can your supervisor
8 help you perform your job more effectively?"

9 You wrote, "Communicate more with
10 conference calls in between our manager meeting, to
11 keep people employed and" -- I'm sorry, the rest
12 looks like it was cut off. Do you remember what
13 else you wrote? My copy is cut off.

14 A Mine, too.

15 Q Yours, too. Okay. I don't have
16 anything more than that.

17 First of all, let me ask you, when you
18 read "your supervisor," who was it that you had in
19 mind?

20 A The DM.

21 Q The district manager?

22 A District manager, yeah.

23 Q So you're saying that the district
24 manager could help you perform your job more
25 effectively if he communicated more with conference

1 A Sunday.

2 Q Did you schedule more hours to cover
3 the store on Sunday than you did on other days of
4 the week?

5 A No, sir.

6 Q What was the next busiest day?

7 A Monday.

8 Q What was the next busiest?

9 A Friday.

10 Q How about the next busiest?

11 A Tuesday.

12 Q And next?

13 A Thursday.

14 Q The next?

15 A Wednesday. And Saturday.

16 Q Saturday was the last, or where does
17 Saturday fall into this? Where would you like to
18 put Saturday?

19 A Saturday, I want to put Saturday like
20 the fifth day.

21 Q So, it would be Sunday, Monday,
22 Friday, Tuesday, Saturday?

23 A Uh-huh.

24 Q Thursday and Wednesday?

25 A Yes, sir.

1 Q Did you adjust the staffing of the
2 employees working at the store to cover the busiest
3 day the most, and the least busy the least?

4 A We have StaffWorks. StaffWorks have
5 all the sales and everything. They will tell you
6 where to put what. We don't really do it.

7 Q Would StaffWorks schedule more
8 employees to work on Sunday than to work on
9 Wednesday?

10 A Yes, sir.

11 Q And that's based on the sales of the
12 store?

13 A Yes, sir.

14 Q Did you ever receive a labor budget
15 stated in dollars rather than hours?

16 A The answer for that, my DM will take
17 whatever money they give for the store; he will
18 divide it and tell me, "You can use that many
19 hours." Giving me a number, the answer would be no.

20 Q Giving you a dollar number?

21 A A dollar number, no.

22 Q He gave it to you in hours?

23 A He gave it to me in hours.

24 Q And it didn't matter to him whether
25 the hours were at a higher hourly rate or a lower

1 hourly rate; he just gave you the number of hours to
2 work with; is that correct?

3 A Yes, that's correct.

4 Q It would have increased the
5 profitability of the store if you had used more
6 employees paid at a lower rate and fewer employees
7 paid at a higher rate, wouldn't it?

8 MR. SINHA: Objection to form.

9 THE WITNESS: I don't know.

10 BY MR. WEINER:

11 Q And if the district manager had taken
12 your assistant to work at Bridgeport and your shift
13 supervisor got sick, called in and said, "Got a
14 fever of 103, can't get out of bed," could you
15 schedule one of the other cashiers for overtime?

16 A It could happen, but it would have to
17 be approved by the DM or by the RVP, which, not a
18 chance.

19 Q The regional vice president wouldn't
20 have you close the store, would he?

21 A No. I would have to stay and cover.
22 And if there's nobody else, they would have called
23 another store, somebody that want extra hours, not
24 to go overtime. They would do that in an emergency.

25 Q What was the biggest store you ever

1 recalls?

2 A Yes, sir.

3 Q Were you responsible for implementing
4 the planograms?

5 A Yeah.

6 Q Were you responsible for checking for
7 outdated inventory?

8 A Yes, sir.

9 Q And were you responsible for
10 determining what merchandise needed to be purchased?

11 A No.

12 Q Were you ever responsible, under Jim
13 Zasso, for merchandise to be purchased?

14 A No, sir.

15 Q Same answer for Mike Barrett?

16 A No, sir.

17 MR. SINHA: "No, sir," meaning you
18 were not responsible?

19 THE WITNESS: No, we never bought
20 anything from anybody. Corporate does all the
21 buying of everything.

22 MR. WEINER: Mr. Sinha, do you have
23 any questions?

24 MR. SINHA: I do.

25 MR. WEINER: Would you, please? I'm

1 going to reserve any further time that I have
2 to a re-examination after you conclude yours.

3 MR. SINHA: Absolutely.

4 EXAMINATION BY

5 MR. SINHA:

6 Q Mr. Perez, can you identify your
7 duties as a store manager at Rite Aid at the Norwalk
8 store?

9 A I was in charge that the store rolls
10 well. I put up stock; unload the truck, took price
11 changes, ordering, ringing on the register,
12 sometimes help with the photo department, clean the
13 parking lot. Swept the floor, sometimes mop it.
14 Make sure the bathroom was clean, throw the garbage
15 out. That's pretty much it.

16 Q Okay. These duties you just
17 identified, do you know if all of these duties were
18 stated in your job description?

19 A No, sir.

20 Q These duties that you identify, would
21 you identify them as nonmanagerial duties?

22 A Correct.

23 Q What portion of the day did you spend
24 doing these duties?

25 A Pretty much all day.

1 Q How frequently, in terms of number of
2 days, did you do these duties? Was it every day
3 that you did -- that you performed these duties?

4 MR. WEINER: Objection as to form.
5 You may answer.

6 THE WITNESS: No, it was done in
7 different days. Like truck day was one day.
8 Then we would merchandise. Then another day we
9 cleaned the floors. The store get swept every
10 day, mopped, clean the bathroom. Different
11 days.

12 BY MR. SINHA:

13 Q And did you consider these duties,
14 these nonmanagerial duties, as part of your regular
15 duties?

16 A Yes, sir.

17 Q Did your performing these
18 nonmanagerial duties affect how you were able to run
19 the store?

20 MR. WEINER: Objection as to form. Go
21 ahead.

22 THE WITNESS: Yes, sir.

23 BY MR. SINHA:

24 Q How so? How did it affect your
25 ability to run the store?

C E R T I F I C A T E

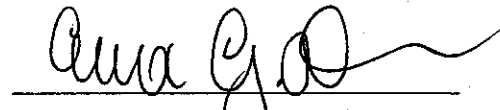
STATE OF Connecticut :
COUNTY/CITY OF Fairfield :

Before me, this day, personally appeared
ARTHUR PEREZ, who, being duly sworn, states that the
foregoing transcript of his/her Deposition, taken in
the matter, on the date, and at the time and place
set out on the title page hereof, constitutes a true
and accurate transcript of said deposition.



ARTHUR PEREZ

SUBSCRIBED and SWORN to before me this 4th
day of August, 2011, in the
jurisdiction aforesaid.

01.31.13

My Commission Expires

Notary Public

DEPOSITION ERRATA SHEET

RE

FILE NO.

CASE CAPTION: Yatram Indergit vs. Rite Aid

DEPONENT: ARTHUR PEREZ

DEPOSITION DATE: July 13, 2011

To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me. I request for the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

SIGNATURE: 

ARTHUR PEREZ

DATE: 8/7/11

Exhibit *ZZ*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on behalf	
of himself and others	Action No.
similarly situated,	#1:08-cv-09361-PGG-
Plaintiffs,	HBP
vs.	
RITE AID CORPORATION, RITE	
AID OF NEW YORK, INC., and	
FRANCIS OFFOR as Aider &	
Abettor,	
Defendants.	

250 PARK AVENUE
NEW YORK, NEW YORK
July 11, 2011 - 10:00 A.M.

DEPOSITION of THOMAS C. PLETKA, before S. Arielle Santos, Registered Professional Reporter, Certified Shorthand Reporter, Certified LiveNote Reporter and Notary Public.

1 THOMAS C. PLETKA
2 employees from stealing Lottery tickets?

3 A As well as other things,
4 yes.

5 Q What did you mean when you
6 said, "I am also trying to train and
7 develop others to move up in the
8 company"?

9 A Assist employees I believe
10 that had management potential and had the
11 desire to move in with the company and
12 try to develop them.

13 Q Okay. And that was
14 something that you and your DM discussed
15 is you helping create promotable
16 candidates, right?

17 A Yes.

18 Q Did you have any candidates
19 in your store?

20 Did you have any employees
21 that you were particularly proud of their
22 development, any mentees?

23 A Not right now, No.

24 Q At Store 3702 were any shift
25 supervisors -- strike that. Excuse me.

1 THOMAS C. PLETKA

2 At Store 3702 were any
3 shifts promoted internally?

4 A Were they promoted to shift
5 or promoted from shift up?

6 Q That is a good distinction.
7 Thank you.

8 Were any -- at Store 3702,
9 were any employees brought from clerk
10 cashier to shift supervisor?

11 A Yes.

12 Q Okay. And is that a
13 promotion that you executed?

14 A No.

15 Q Who executed that promotion?

16 A Has to be I recommend,
17 district manager has to approve, and
18 interview, employer relations and
19 security has to do it.

20 Q Okay. So that person has to
21 be interviewed by the DM, HR, and LP?

22 A Yes.

23 Q And that's based on your
24 recommendation?

25 A Yes.

1 THOMAS C. PLETKA

2 Q And did you ever recommend
3 someone to be promoted that was not, in
4 fact, promoted?

5 A Yes.

6 Q Who was that?

7 A I can't remember. I just
8 know I have recommended people to get
9 management positions that were not.

10 Q Okay. Is it fair to say the
11 majority of the people that you recommend
12 be promoted in your store are promoted?

13 A Yes.

14 Q "Number 6: What do you feel
15 are your greatest strengths in your
16 current position?"

17 And you wrote: "Inventory
18 control, customer service, store
19 conditions, and loss prevention."

20 Right?

21 A Yes.

22 Q What do you mean by
23 "inventory control"?

24 A Trying to maintain product
25 on the shelf, having the necessary items

1 THOMAS C. PLETKA

2 for ads.

3 Q You are talking about the ad
4 ordering?

5 A Not just ad ordering, but
6 the vendors -- the outside vendors, like
7 beer, potato chips, things that are
8 delivered to the store.

9 Q As a store manager you are
10 responsible for cycle counts, right?

11 MR. SINHA: Objection
12 to form.

13 THE WITNESS:
14 Responsible to get -- yes,
15 responsible to get them
16 done.

17 BY MR. SCOTT:

18 Q Right.
19 And zero counts?

20 A Yes. We have to see they
21 are done.

22 Q And those cycle counts and
23 zero counts generate an order which then
24 comes to the store by the truck, right?

25 A Supposed to.

1 THOMAS C. PLETKA

2 follow, your ultimate goal is to make the
3 store as profitable as possible, right?

4 A Yes.

5 Q As the store manager, you're
6 the highest ranking front-end person at
7 the store, right?

8 A Yes.

9 Q And the ASM is the second
10 highest, right?

11 A Yes.

12 Q You can assign tasks to
13 anybody in the front end of the store?

14 A Yes.

15 Q And the ASM can assign tasks
16 to anybody in the front end of the store
17 but you?

18 A Yes.

19 Q The ASM wouldn't assign you
20 a task, right?

21 A Well, I have been known to
22 put the assistant manager in charge of
23 the store to develop them, and then they
24 would say, "Go do this," and I did it.

25 Q You made them manager for

1 THOMAS C. PLETKA

2 the day?

3 A It works.

4 Q How long would they be
5 manager of the store, when you do a
6 development and exercise like that?

7 A Maybe for the day.

8 Q And you found that to be a
9 good developmental tool?

10 A Yes, because I am there to
11 assist them if they develop a problem
12 they don't know how to handle.

13 Q How many times have you done
14 that?

15 A I can't tell you. Many
16 times.

17 Q How many hours a week do you
18 work?

19 A Required to work 50.
20 Usually 50 to 60.

21 Q Hang on one second.
22 How many hours a week did
23 you work in 3702, approximately?

24 A Over the four years I was
25 there, we were required to work 50.

1 THOMAS C. PLETKA

2 There was many times I worked 60 or more.

3 Q 60 plus.

4 How many hours a week did

5 you work 948?

6 A It is the same thing. Many

7 weeks I worked 60 or 70 hours.

8 Q How many hours a week are

9 you currently working?

10 A Last few weeks, 50.

11 Q What causes the fluctuation

12 of hours such that you might get up to

13 the 60 or 70?

14 A Lack of management help.

15 You have to have a manager in the store

16 at all times.

17 Q If you don't have an ASM or

18 the ASM is on vacation or something like

19 that, you have to work more hours, right?

20 A If we can't locate any help

21 from anybody else, other labor

22 constraints.

23 Q Right.

24 You don't want to leave the

25 store unmanned by a manager, right?

1 THOMAS C. PLETKA

2 A You can't. State law.

3 Q How many ASMs did you have
4 in 3702 at one time?

5 A I believe there was two when
6 it was a 24-hour store --

7 Q Right.

8 A -- one for midnights and one
9 for days.

10 Q Was one ASM assigned to work
11 the overnight shift?

12 A Usually, yes.

13 Q How often did you personally
14 work the overnight shift?

15 A A few.

16 Q So that overnight ASM would
17 be the highest-ranking manager in the
18 store the majority of the time he was
19 there, right?

20 A Yes.

21 Q The other ASM would
22 typically work days?

23 A Yes.

24 Q And that person would have
25 more overlap with you than his -- than

1 THOMAS C. PLETKA

2 Q At all times you have
3 accepted your paycheck, right?

4 A Yes.

5 Q No deductions have ever been
6 made from your paycheck, right?

7 A I don't understand
8 deductions. I mean, there's a lot of
9 deductions made on paychecks, because
10 it's for healthcare, dental, stuff like
11 that.

12 Q Sure. Sure.
13 But let me ask this another
14 way.

15 Outside of the customary
16 healthcare, federal tax withholding,
17 state tax withholding deductions,
18 Rite-Aid Corporation has never taken a
19 part of your paycheck away, right?

20 A Correct.

21 Q Okay. Have you ever made
22 any complaints during your time as a
23 store manager that you should be
24 receiving overtime?

25 A I have made comments that I

1 THOMAS C. PLETKA

2 am saying I am working too much.

3 Q To whom did you make those
4 comments?

5 A District managers.

6 Q The two that we discussed?

7 A Yes.

8 Q Did you ever say, "I should
9 get overtime"?

10 A No.

11 Q Do you believe you're the
12 equivalent of an hourly employee?

13 A Sometimes, no. Sometimes,
14 yes. I mean, yes, because I do so many
15 of the things they perform.

16 Q And you do so many of the
17 things they don't perform, right?

18 A Yes, I do.

19 Q And you receive bonuses
20 based on the overall profitability of the
21 store, right?

22 A Sometimes.

23 Q Have you made any attempts
24 to calculate the damages that you believe
25 that you're owed in this action?

1 THOMAS C. PLETKA

2 A Not at the current time.

3 Q Do you know what damages
4 you're seeking?

5 A I would have to -- not at
6 the moment.

7 Q How did you find out about
8 the lawsuit? You were sent the notice?

9 A Yes.

10 Q And you said you haven't
11 discussed the lawsuit with any other
12 Rite-Aid employees?

13 A No.

14 Q By that you mean I am right?

15 A I have not discussed it with
16 other Rite-Aid employees.

17 MR. SCOTT: Let's go
18 off for one second.

19 (Whereupon, a Recess is
20 Taken.)

21 MR. SCOTT: All right.

22 Let's go back on.

23 BY MR. SCOTT:

24 Q You understand you are still
25 under oath?

1 THOMAS C. PLETKA
2 given me prior to this recross has been
3 truthful and accurate, right?

4 A Yes.

5 MR. SCOTT: Okay. I
6 just want to close out.

7 MR. SINHA: Very good.

8
9 EXAMINATION

10 BY MR. SINHA:

11 Q Mr. Pletka, can you identify
12 your day-to-day duties as store manager?

13 A Supervise employees. I
14 daily go in there. I run register every
15 day. I stock the shelves every day.
16 Several times a week I do sweep the
17 floor. Once a week I unload the truck.
18 Day to day it's taking care of the
19 customers to help face the store. Do
20 zero counts.

21 Q Would you agree your duties
22 include managerial and nonmanagerial
23 duties?

24 A Yes.

25 Q How much time -- you

1 THOMAS C. PLETKA

2 described cleaning and stocking shelves.

3 Would you characterize those
4 as nonmanagerial duties?

5 A Probably between 50 and
6 60 percent.

7 Q And how frequently do you do
8 those kind of duties? Every day?

9 A Daily.

10 Q Do you consider those to be
11 part of your regular duties?

12 A Yes.

13 Q You said previously you had
14 worked 60 to 70 hours a week as a store
15 manager; is that right?

16 A Yes.

17 MR. SCOTT: Objection
18 to form.

19 BY MR. SINHA:

20 Q Right now you work about
21 fifty, you said?

22 A Yes.

23 Q Why did that change?

24 A Several months ago I was
25 working and had worked several weeks in a

1 THOMAS C. PLETKA
2 row, not a single day off. And due to
3 staffing issues the store had to be open;
4 so I worked it. And then you start
5 getting chewed out for not having certain
6 things done, and I just didn't feel I was
7 appreciated; so I said I am not doing it
8 anymore. I basically kept myself back to
9 50 hours because it was just too much.

10 Q The nonmanagerial duties
11 that you described, are those duties that
12 the other nonmanagerial staff also
13 perform?

14 A Yes.

15 MR. SCOTT: Objection
16 to form.

17 BY MR. SINHA:

18 Q Do you feel your performing
19 those duties affect your ability to run
20 the store?

21 MR. SCOTT: Objection
22 to form.

23 MR. SABA: What is the
24 basis?

25 MR. SCOTT: Leading.

1 THOMAS C. PLETKA

2 And it's vague as to "those
3 duties."

4 BY MR. SINHA:

5 Q Do you understand the
6 question? I can rephrase it.

7 You described certain duties
8 that you do, like cleaning and stocking,
9 which you said were nonmanagerial duties.

10 Do your performing those
11 duties affect your ability to run the
12 store overall?

13 MR. SCOTT: Objection
14 to form.

15 THE WITNESS: I really
16 don't believe so. I mean,
17 it does affect the amount of
18 time I have for planning,
19 but I am able to still plan
20 while doing some of those
21 activities.

22 BY MR. SINHA:

23 Q Well, let's say you're
24 cleaning or stocking shelves.

25 Are you able to see what is

1 THOMAS C. PLETKA

2 going on at other parts of the store?

3 A Very limited on what I can
4 actually see.

5 Q And what percentage of the
6 time do you spend, say per week,
7 regarding those nonmanagerial duties?

8 MR. SCOTT: Objection
9 to form.

10 THE WITNESS: Again,
11 probably between 50 and
12 60 percent my time is doing
13 those activities.

14 BY MR. SINHA:

15 Q Before you were shown the
16 job description for store manager, I
17 think it was --

18 MR. SCOTT: 19.

19 BY MR. SINHA:

20 Q Exhibit 19, you have it in
21 front of you?

22 A Yes, I do.

23 Q Are any of the nonmanagerial
24 duties that you described identified on
25 that job description?

1 THOMAS C. PLETKA

2 A No, they are not.

3 Q Regarding the assistant
4 store managers, do they do -- what kind
5 of duties do assistant store managers do?

6 A Basically the same duties as
7 store manager. Oversee the store, will
8 stock the shelves, check out of dates,
9 sweep the floor if necessary, face the
10 store, take care of customers, run
11 register.

12 Q Any of the same duties that
13 you do?

14 A Yes, they do.

15 Q And are the assistant store
16 managers hourly or are they salary?

17 MR. SCOTT: Objection
18 to form.

19 THE WITNESS: In the
20 past they were salary. I
21 believe they have all been
22 converted to an hourly basis
23 now.

24 BY MR. SINHA:

25 Q Do you agree there are very

1 THOMAS C. PLETKA

2 MR. SCOTT: Objection
3 to form.

4 THE WITNESS: The
5 direct supervisor of that
6 employee makes the
7 evaluation. I, as store
8 manager, would be doing the
9 assistants and other
10 personnel.

11 BY MR. SINHA:

12 Q Regarding the final
13 evaluation?

14 A And then the district
15 manager would sign off on it.

16 Q So the district manager
17 still has to sign off on your evaluation
18 of --

19 A The assistant manager.

20 Q -- the assistant manager?

21 MR. SCOTT: Objection
22 to form.

23 THE WITNESS: Yes.

24 BY MR. SINHA:

25 Q What -- what role do you

1 THOMAS C. PLETKA

2 have in, say, payroll?

3 A None.

4 Q What role do you have in
5 saying the budget of your store?

6 MR. SCOTT: Objection
7 to form.

8 THE WITNESS: Budget as
9 to the sales or payroll, I
10 have no input at all.

11 BY MR. SINHA:

12 Q Do you have any ability to
13 change the budget?

14 A No.

15 Q Who has that ability to
16 change or set the budget?

17 A The district manager has
18 some control. I do not know how much.

19 Q Who is ultimately
20 responsible for profitability at your
21 store?

22 A The store manager is held
23 responsible for what I consider to be
24 corporate because those are the ones that
25 set the budget, the sales and everything,

1 THOMAS C. PLETKA

2 all the work that has to be done.

3 Q And for those matters -- the
4 budget, payroll -- that's determined by
5 corporate, you said; is that right?

6 MR. SCOTT: Objection
7 to form.

8 THE WITNESS: Yes, that
9 could be district manager.
10 I am not exactly sure who.

11 BY MR. SINHA:

12 Q Do you believe you have
13 autonomy to run your store?

14 A No.

15 Q You testified that you were
16 a training manager; is that right?

17 A Yes.

18 Q And you went to different
19 stores to train?

20 A Yes.

21 Q That included, I believe, in
22 Massachusetts, Pennsylvania, and I
23 believe North Carolina; is that right?

24 A Yes.

25 Q Were -- was there any

1 THOMAS C. PLETKA
2 difference between how you trained the
3 store in Massachusetts and how you
4 trained the store in Pennsylvania and
5 North Carolina?

6 A No.

7 Q You had to follow the same
8 corporate guidelines?

9 A Yes.

10 MR. SCOTT: Objection
11 to form.

12 THE WITNESS: We were
13 given packet for shift
14 supervisor, assistant
15 manager, manager, and the
16 function of each had to
17 become familiar with.

18 BY MR. SINHA:

19 Q And that package was the
20 same for each store?

21 A Yes.

22 MR. SCOTT: Objection
23 to form.

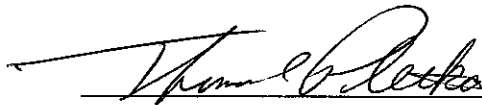
24 BY MR. SINHA:

25 Q Are you aware if there are

A C K N O W L E D G E M E N T

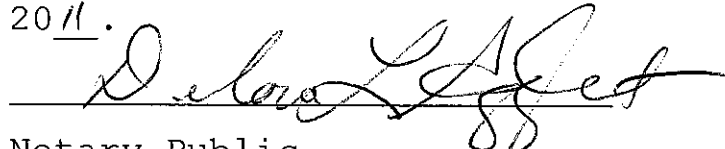
STATE OF West Virginia
COUNTY OF Kanawha

I, the undersigned, hereby
certify that I have read the transcript
of my testimony taken under oath in my
deposition; that the transcript is a true
and complete and correct record of my
testimony, and that the answers on the
record as given by me are true and
correct.



THOMAS C. PLETKA

Signed and subscribed to
before me

This 4th day ofAugust,2011.
Notary Public